

Decision 05-04-012 April 7, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition for Authority to Transfer Ownership of
New Access Communications LLC (U-6545-C)
from Jasper Holdings LLC to North Central
Equity LLC.

Application 05-01-008
(Filed January 12, 2005)

OPINION GRANTING TRANSFER OF CONTROL

1. Summary

This decision authorizes Jasper Holdings LLC (Jasper) to transfer control of New Access Communications LLC (NAC) to North Central Equity LLC (North Central). This transfer of control is to take place through the transfer of 100% of the ownership interest in NAC by Jasper to North Central, as more fully described in the application and exhibits attached to the application.

2. Background

NAC, a Minnesota limited liability company, qualified to transact business in California, was granted a Certificate of Public Convenience and Necessity (CPCN) to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services offered by communication common carriers in California. This authority was granted on June 11, 2001, pursuant to Decision (D.) 01-06-014, which assigned NAC its corporate identification number U-6545-C.

The CPCN granted NAC was expanded to include resold local exchange telecommunications services in the service territories of Pacific Bell Telephone

(doing business as SBC) and Verizon California Inc. as a competitive local carrier (CLC) pursuant to D.01-10-010, dated October 10, 2001. Its CPCN was further expanded to include limited facilities-based competitive local exchange services within California pursuant to D.03-07-015, dated July 10, 2003. Its principal place of business is 801 Nicollet Mall, Suite 350, Minneapolis, Minnesota.

NAC is also authorized to provide intrastate telecommunications services in 44 states, resold local exchange service in 30 states, and facilities-based local exchange service in 23 states either pursuant to certification, registration, tariff requirements, or on an unregulated basis. NAC is further authorized by the Federal Communications Commission to provide domestic interstate and international services as a non-dominant telecommunications carrier.

Jasper, a Minnesota limited liability company, controls NAC through its 100% ownership interest in NAC. It maintains the same address as NAC for its principal place of business.

North Central, a Minnesota limited liability company, has managerial and financial expertise in the field of telecommunications. Elam Baer is North Central's President, Chief Executive Officer, Chief Manager, Secretary, and Treasurer. Its principal place of business is located at 60 South Sixth Street, Suite 2535, Minneapolis, Minnesota 55402.

3. Requested Authority

Applicants NAC, Jasper, and North Central jointly filed this application requesting approval of the transfer of control of NAC to North Central from Jasper. By way of background, North Central and the members of NAC entered into a Unit Purchase Agreement (the Agreement) on December 16, 2004, whereby North Central will acquire 100% of the ownership interests in NAC. This transfer of control is to take place pursuant to the Agreement, a copy of which is

attached to the application under seal. Pursuant to that agreement, Jasper will exchange its 100% ownership interest of NAC to North Central.

Applicants state that the proposed transaction is in the public interest because it will enable NAC to access the financial resources it needs to introduce new products and services and to respond to competition in the telecommunications environment. In that regard, North Central tendered under seal copies of its recent financial statements to demonstrate that it has sufficient cash and cash equivalence to provide the necessary funding for NAC. This information, along with the recent financial statements of NAC and transfer agreement, was filed under seal because none of the Applicants are publicly traded companies and the information, if disclosed, could place Applicants at a competitive disadvantage.

All information placed under seal should remain sealed for a period of two years from the date of this order, and during that period should not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted protective order or further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

Applicants also expect that the transfer of control will enable each applicant to benefit from increased economies of scale that will permit them to operate more efficiently and thus to compete more effectively.

Upon approval of this transfer of control NAC, with 3,000 customers in California, will continue offering its current services using the same name and operating authority. The same 53.5% of the ultimate individual owners of Jasper own North Central directly. Accordingly, there will be no ultimate change in control of NAC as a result of this transaction.

There were no protests to this application.

4. Discussion

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854. Section 854(a) states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).¹ The primary standard used by the Commission to determine if a transaction should be authorized under § 854(a) is whether the transaction will adversely affect the public interest.² The Commission may also consider if the transaction will serve the public interest.³ Where necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.⁴

¹ D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19; and D.91-05-026, 40 CPUC 2d 159, 171.

² D.00-06-079, p. 13; D.00-06-057, p. 7; D.00-05-047, p. 11 and Conclusion of Law (COL) 2; D.00-05-023, p. 18; D.99-03-019, p. 14; D.98-08-068, p. 22; D.98-05-022, p. 17; D.97-07-060, 73 CPUC 2d 601, 609; D.70829, 65 CPUC 637, 637; and D.65634, 61 CPUC 160, 161.

³ D.00-06-005, 2000 Cal. PUC LEXIS 281, *4; D.99-04-066, p. 5; D.99-02-036, p. 9; D.97-06-066, 72 CPUC 2d 851, 861; D.95-10-045, 62 CPUC 2d 160, 167; D.94-01-041, 53 CPUC 2d 116, 119; D.93-04-019, 48 CPUC 2d 601, 603; D.86-03-090, 1986 Cal. PUC LEXIS 198 *28 and COL 3; and D.8491, 19 CRC 199, 200.

⁴ D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; D.90-07-030, 1990 Cal. PUC LEXIS 612 *5; D.89-07-016, 32 CPUC 2d 233, 242; D.86-03-090, 1986 Cal. PUC LEXIS 198 *84-85 and COL 16; and D.3320, 10 CRC 56, 63.

For the following reasons, we conclude that it is reasonable to grant this § 854(a) application. First, NAC will continue to operate as it has in the past, using the same name and operating authority. Second, the public may benefit from the transfer of control to the extent the transaction enhances the ability of NAC to maintain and expand its services and operations in California. Third, there is no opposition to this application. For these reasons, we see no reason to withhold authority for the transfer of control before us here.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3146, dated January 27, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3146.

6. Expedited Approval

Applicants have requested expedited approval of this application by the Executive Director. Ordering Paragraph 1 of D.87-10-035 provides in relevant part that the Executive Director may grant noncontroversial applications by nondominant telecommunications carriers for authority to transfer assets or control under §§ 851-855.⁵ However, North Central does not qualify for expedited approval by the Executive Director because North Central is not a California certificated nondominant telecommunications carrier.

⁵ CPUC 2d 459 at 462 (1987).

7. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Michael J. Galvin is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. NAC possesses a CPCN to provide switchless interLATA and intraLATA telecommunications services, resold local exchange telecommunications services, and limited facilities-based competitive local exchange services within California under the U-6545-C corporate identification number.

2. Applicants seek authority for North Central to acquire control of NAC through a transfer of 100% of the ownership interest of NAC from Jasper.

3. Pub. Util. Code § 854(a) requires Commission authorization to transfer control of a public utility. Any transfer of control without Commission authorization is void under the statute.

4. North Central has sufficient cash and cash equivalence to provide the necessary funding for NAC.

5. NAC, with 3,000 customers in California, will continue offering its current services and using the same name and authority after the transfer of control.

6. NAC is current on reporting and transmitting the user fees applicable to its California operations.

7. There is no opposition to this application.

8. North Central has the technical, managerial, and financial qualifications necessary to exercise control of NAC.

Conclusions of Law

1. This is a ratesetting proceeding and no hearing is necessary.
2. No protests have been received.
3. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from ability of NAC to maintain and expand its services and operations in California.
4. Approval of this application is not a finding of value of the rights and property being transferred.

O R D E R

IT IS ORDERED that:

1. Jasper Holdings LLC (Jasper) is authorized pursuant to Sections 851-844 of the Public Utilities Code to transfer 100% of the ownership interests of New Access Communications, LLC (NAC) to North Central Equity LLC (North Central), as more fully described in the application and exhibits attached to the application.
2. NAC and North Central shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of control, as authorized herein, within 10 days of this order. A true copy of the instrument(s) of transfer shall be attached to the notification.

3. Applicants' request to have their financial information and Unit Purchase Agreement under seal is granted for two years from the date of this order, and during that period shall not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted protective order or further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

4. Application 05-01-008 is closed.

This order is effective today.

Dated April 7, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners